



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	45
VAC Chapter Number:	20
Regulation Title:	Board for Branch Pilots Regulations
Action Title:	Amending
Date:	November 29, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

Due to recent disciplinary files that were brought before the Board, the Board for Branch Pilots has determined that their regulations governing the performance of a branch pilot's duties while chemically and/or physically impaired may need to be clarified.

The purpose of the proposal is to make the following changes:

Clarify the Board's regulations relating to chemical and physical impairments and testing thereof.

Other changes which may be necessary pursuant to the Board's periodic review of its regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Board for Branch Pilots adopted final regulations entitled "Board for Branch Pilots Regulations" at their meeting on Tuesday, November 7, 2000.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

§ 54.1-902.A of the Code of Virginia authorizes the Board for Branch Pilots to promulgate regulations for a regulatory system to regulate individuals in Virginia that practice as branch pilots. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

As the final text differs from that of the proposed, the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulations and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

In order to protect the public, the Board desires to clarify in its regulations as to when a pilot is considered impaired so that the pilots are clear when not to pilot a ship and to ensure that its regulations in this area are current with the realities of today's world. In addition, the Board is proposing to add a random testing program as most chemical testing programs include random

testing and, currently, the Board's regulations do not include provisions for random testing. Further, the Board's regulations do not clearly address impairment by over the counter medications, prescribed medications, or combinations thereof and the proposed changes will clarify these issues.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

A summary of each of the changes follows:

VAC # & SUMMARY

18 VAC 45-20-05 Add a new section which contains definitions.

18 VAC 45-20-10.A.4 and A.5 New pilots are required to notify the Board of any chronic or acute physical or mental impairment that may prevent them from safely performing their duties. Clarify the Board's requirements for chemical testing to reflect the new language.

18 VAC 45-20-10.B.5, 18 VAC 45-20-20.B.1, and 18 VAC 45-20-20.C.2 Delete the Board's requirement for drug testing during renewal and when a limited pilot becomes an unlimited pilot. These are no longer necessary with the random testing program.

18 VAC 45-20-40.9, 10, 11, 12, 13, 14, 15, 16 & 17 These sections are being clarified and/or added to properly implement the Board's chemical testing program.

18 VAC 45-20-50 New section added detailing the requirements of the Board's random chemical testing program.

The following changes have been made to text of the proposed regulations since its publication:

"Must" to "shall" - 18 VAC 45-20-10.A.4, 18 VAC 45-20-30, and 18 VAC 45-20-40.9.

"Are" to "shall be" - 18 VAC 45-20-10.A.6, 18 VAC 45-20-10.B.7, 18 VAC 45-20-20.B.4, 18 VAC 45-20-20.C.6, and 18 VAC 45-20-50.

Further clarification made in 18 VAC 45-20-05, 18 VAC 45-20-10.A.4, 18 VAC 45-20-40.11, 18 VAC 45-20-40.13, and a new section numbered 18 VAC 45-20-40.14 added and subsequent sections renumbered accordingly.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantages to the proposed changes are that the public will be better protected with regards to potentially impaired branch pilots (through the random testing program) and that branch pilots will be clear when not to pilot a ship. Further, these changes will ensure that the Board's regulations regarding impairment are current with the realities of today's world. The only disadvantage is a slight increase in the cost of the regulatory program to the Board's regulants.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The following changes have been made to text of the proposed regulations since its publication:

"Must" to "shall" - 18 VAC 45-20-10.A.4, 18 VAC 45-20-30, and 18 VAC 45-20-40.9.

"Are" to "shall be" - 18 VAC 45-20-10.A.6, 18 VAC 45-20-10.B.7, 18 VAC 45-20-20.B.4, 18 VAC 45-20-20.C.6, and 18 VAC 45-20-50.

Further clarification made in 18 VAC 45-20-05, 18 VAC 45-20-10.A.4, 18 VAC 45-20-40.11, 18 VAC 45-20-40.13, and a new section numbered 18 VAC 45-20-40.14 added and subsequent sections renumbered accordingly.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comment was received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the

proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

A summary of each of the changes follows:

VAC # & SUMMARY

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Further clarification made in 18 VAC 45-20-05, 18 VAC 45-20-10.A.4, 18 VAC 45-20-40.11, 18 VAC 45-20-40.13, and a new section numbered 18 VAC 45-20-40.14 added and subsequent sections renumbered accordingly.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The contemplated changes are expected to have no impact on families.

